

App. Serial No. 10/535,297
Docket No.: AT020067

Remarks

Claims 1-11 are currently pending in the patent application. For the reasons and arguments set forth below, Applicant respectfully submits that the claimed invention is allowable over the cited references.

In the instant Office Action dated April 11, 2007, claims 1-11 stand rejected under 35 U.S.C. § 103(a) over Ballinger *et al.* (U.S. Patent No. 2,351,904) in view of Japanese patent 55-92095; claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) over Ballinger in view of Japanese patent 55-92095 as applied to claim 1 above, and further in view of Japanese patent 402057097; claim 10 stands rejected under 35 U.S.C. § 103(a) over Ballinger in view of Japanese patent 55-92095 as applied to claim 1 above, and further in view of Hoffman (U.S. Patent No. 1,040,294).

Applicant respectfully traverses the Section 103(a) rejection of claims 1-11 based upon Ballinger in view of Japanese patent 55-92095 because there is no motivation to combine the cited teachings of the references. The Office Action cites to Ballinger's diaphragm 38 and proposes adding stiffening grooves to diaphragm 38. However, Ballinger teaches that diaphragm 38 is made of a material relatively dead vibrationally, meaning a fairly heavy material that has a low modulus of elasticity, such that the diaphragm tends to move as a unit without any flexure intermediate its ends. *See, e.g.*, Col. 2:17-35 and Col. 5:28-35. Thus, there would be no motivation to add stiffening grooves to Ballinger's diaphragm 38 because the diaphragm made of a substantially inflexible material. Accordingly, the Section 103(a) rejection of claims 1-11 is improper and Applicant requests that it be withdrawn.

Moreover, the cited portions of Japanese patent 55-92095 do not correspond to claimed limitations directed to a central cup-shaped depression. The cited portions of Japanese patent 55-92095 depict a region 6 with items 11 and 12 (which the Office Action asserts are stiffening grooves). However, as shown in Figure 2, region 6 does not have a central cup-shaped depression as in the claimed invention. Therefore, the Section 103(a) rejection of claims 1-11 is improper and Applicant requests that it be withdrawn.

Further, the Office Action cites to various portions of Japanese patent 55-92095 (which is entirely in Japanese with the exception of the Abstract) without providing a corresponding English translation of the document as is required. According to

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M.P.E.P. § 706.02, "(i)f the document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection." As the Office Action has not provided an English translation of Japanese patent 55-92095, any rejection based upon this reference is improper. Accordingly, Applicant requests that the Section 103(a) rejection of claims 1-11 be withdrawn. Should any rejection based upon Japanese patent 55-92095 be maintained, Applicant respectfully requests an English translation of the document and an opportunity to respond thereto.

Applicant further traverses the Section 103(a) rejection of claims 8 and 9 because the Office Action relies upon various portions of Japanese patent 402057097 (which is also entirely in Japanese with the exception of the Abstract) without providing a corresponding English translation of the document as is required. *See* M.P.E.P. § 706.02 and the discussion above. As the Office Action has not provided an English translation of Japanese patent 402057097, any rejection based upon this reference is improper. Therefore, Applicant requests that the Section 103(a) rejection of claims 8 and 9 be withdrawn. Should any rejection based upon Japanese patent 402057097 be maintained, Applicant respectfully requests an English translation of the document and an opportunity to respond thereto.

Applicant further traverses the Section 103(a) rejection of claim 10 because the cited portions of the Hoffman reference do not correspond to stiffening grooves. More specifically, Hoffman teaches that arc shaped lines 14 (which become wider and deeper as they approach the edge) are cut or engraved into diaphragm 11 in order to weaken the diaphragm. *See, e.g.* Figure 2, lines 55-64, and lines 96-99. Accordingly, the Section 103(a) rejection of claim 10 is improper and Applicant requests that it be withdrawn.

Moreover, the combination of Hoffman's scoring with Ballinger's diaphragm 38 would undermine a purpose of the Ballinger reference. According to M.P.E.P. § 2143.01, if a "proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." *See In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984). As discussed above, Ballinger's diaphragm 38 is made from a heavy material and is relatively dead vibrationally, such that the diaphragm tends to move as a unit without any

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flexure intermediate its ends. *See, e.g.*, Col. 2:17-35 and Col. 5:28-35. The addition of Hoffman's scoring to Ballinger's diaphragm 38 would weaken the diaphragm. The weakening of Ballinger's diaphragm 38 would cause the Ballinger reference to cease to function properly, thus undermining its purpose. Therefore, the Section 103(a) rejection of claim 10 is improper and Applicant requests that it be withdrawn.

In view of the remarks above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, Peter Zawilski, of NXP Corporation at (408) 474-9063 (or the undersigned).

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